tion with my first motion to strike, that it does not relate to any issue in the indictment, that it is a book of historical facts, that its possession and circulation is protected by the First Amendment, and that the reading of the excerpts therefrom in the manner done was highly prejudicial to the defendants.

The Court: Motion denied.

Now I will treat your motion as having been made to all the balance of Mr. Budenz's testimony page by page and answer by answer, and also Exhibits 31-A, 32 and 33, severally and together upon all the grounds that you have mentioned in support of all the motions made heretofore this morning, and I will deny them all.

(To bailiff) Now call in the jury.

* * * * * *

—Tr. Tr. 2136—

* * * * * *

Mr. Gladstein: Your ruling prevented me from reading certain portions of this book which this witness vouched for the truth of.

The Court: I don't want any argument before the jury, Mr. Gladstein.

Mr. Gladstein: I take exception to the ruling, your Honor.

The Court: That is all right. The time for argument is in the summation.

Mr. Gladstein: And the time for contradictory statements of a witness is during the cross-examination.

The Court: Yes, and I consider that remark im-

—Tr. Tr. 2137—

pertinent. I have ruled both of those statements inadmissible. You will please refrain from such comments in the future.

Mr. McGohey: I move to strike the comment, your Honor.

The Court: Strike it out.

* * * * *

—Tr. Tr. 2294—

New York, April 4, 1949

* * * * *

Q. Isn't it a fact, Mr. Budenz, that the cause of that strike was publicly stated by Senator Barkley, now the Vice President—

Mr. McGohey: I object.

Mr. Gladstein: May I finish?

The Court: You are putting proof in in your questions. You put all the answers in.

Mr. Gladstein: That is exactly what cross-examination is—the direction of a particular point to the attention of a witness and the request that he answer it truthfully yes or no.

The Court: Sometimes, but when the Court has indicated that a certain line of questioning is not proper and then counsel proceeds to formulate questions with all the answers that he wants in the ques-

—Tr. Tr. 2295—

tions it makes a little different situation.

Mr. Gladstein: Well, I will reframe the question.

Q. Did the then Senator Barkley, who is now the Vice President of the United States, publicly express himself concerning the Allis Chalmers Company's poor labor record?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Do you know that there was an Office of Production Management in existence at that time? Do you know that? A. I think there was, yes, sir.

Q. Now there was also of course a Conciliation Service connected with the United States Department of Labor, is that correct? A. That is a well known Service.

Q. Did the Conciliation Office and the Office of Production Management intervene in that dispute in an effort to settle it?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did you learn whether that was so?

Mr. McGohey: Objection.
The Court: Sustained.

Q. Did the Office of Production Management and the Conciliation Service make a proposal to the company and the union to settle the dispute?

—Tr. Tr. 2296—

Mr. McGohey: Objection.
The Court: Sustained.

Budenz—Cross
Colloquy

Q. Did the members of the union accept a proposal of settlement from the representative agencies of the United States Government which however was turned down by the company?

Mr. McGohey: Objection.

The Court: Sustained.

Mr. McGohey: Now if the Court please, I must now argue an objection to this line of questioning because we are getting back to just the vice your Honor pointed out—the questions purport to give a history of a controversy between the Allis Chalmers people and the union, whatever it was, in the form of the question.

I take the position that what happened in the settlement of that strike is not an issue in this case.

The Court: That is right.

Mr. McGohey: And secondly that the form of these questions designed to put that all in evidence is improper and the Court has warned counsel about if and I now object to the whole line.

The Court: Yes. Mr. Gladstein, you will please turn to something else.

Mr. Gladstein: May I say, your Honor, that unless I am permitted to negate this witness's claim

—Tr. Tr. 2297—

that a particular conversation took a particular turn, that certain things were said—unless I am permitted to negate that point showing what the facts were concerning that controversy then your Honor is making it impossible for me to show—

The Court: Well—

Mr. Gladstein: May I finish?

The Court: Your persistence in this case—

Mr. Gladstein: Your Honor, will you let me finish?

The Court: —would make it necessary to let the jury retire every time you hold forth on something.

Mr. Gladstein: I am not seeking that.

The Court: You seem to fail to realize that I have a reasonable amount of intelligence. I have followed what you have been doing here and I have sustained a variety of objections and I tell you now to turn now to another subject. Instead you go on arguing about the same thing and you must know that when a lawyer does that the only inference to a reasonable person is that he is trying to leave the impression that maybe these questions represent the truth whereas I ruled them out.

Mr. Gladstein: They do represent the truth and I intend to show that they do. Let me put it this way—

—Tr. Tr. 2298—

The Court: You don't put it any more ways. You go on to something else.

Mr. Gladstein: May I be heard in regard to this line of questions?

The Court: No, I don't want to hear any more about it. It is very clear to me now.

By Mr. Gladstein:

Q. You have already testified that you wrote an article about that strike. A. No, sir.

Budenz—Cross
Colloquy

Q. You so testified a few minutes ago. A. I have written articles about the Allis Chalmers strike.

Mr. McGohey: Keep your voice up, Mr. Budenz.

Q. Now I call your attention to an issue of the Daily Worker of Friday March 28, 1941; and direct your attention to page 4 of that newspaper and ask you to state, if you can, identify on that page—be careful of the paper, will you, Mr. Budenz; it is almost falling apart—an article written by you on the Allis Chalmers dispute? A. No, sir, not firsthand on the Allis Chalmers dispute.

—Tr. Tr. 2299—

Q. Well, is it your article? A. Yes, it is my article.

Q. All right.

The Court: What do you mean it isn't "firsthand," Mr. Budenz?

The Witness: It doesn't deal with the Allis Chalmers strike. It deals—

The Court: You mean you don't write as a person who has observed those facts personally?

The Witness: That is right.

The Court: That is what you mean?

The Witness: Yes. I wrote it as a sort of editorial, I would say.

The Court: Yes.

Q. What is the headline? A. "Secretary"—

Mr. McGohey: Now, if your Honor please, I object to that until I have a chance to look at it.

The Court: Sustained.

Mr. McGohey: Because it is clearly along the same lines to which I have objected.

(Mr. Gladstein hands to Mr. McGohey.)

Mr. McGohey: Clearly, I am going to object to any reading of that. That is precisely along the lines of what your Honor has said may not be examined about.

Mr. Gladstein: Surely, your Honor, I am permit-

—Tr. Tr. 2300—

ted to have the document identified.

The Court: Oh, yes.

Mr. McGohey: Oh, I am not objecting to that. I am objecting to the reading of it prior to its admission.

The Court: It is getting in indirectly what I have repeatedly excluded.

Mr. McGohey: That is right, and which on its face, your Honor, by the very words itself shows that it is hearsay, what somebody else, not connected with it, said.

Mr. Gladstein: I asked for the headline to identify it.

• • • • •

—Tr. Tr. 2335—

Mr. Gladstein: There are a number of these which I would like your Honor to look over—

The Court: Well—

Mr. Gladstein: No, not all at one time.

The Court: I am afraid this is the last time that I am going to read through from start to finish. If

you cannot show me the parts that you think are inconsistent—

Mr. Gladstein: Well, the whole thing is inconsistent and negates—

The Court: Well, that statement I will just not—I was up to the middle of the (examining) eighth column, and I don't desire to read any more. I could see what your view is, and the papers are excluded.

Mr. Gladstein: May I make an argument for the record as to the object of those documents? I think I should be permitted to do that.

The Court: You have already made a good deal of argument, Mr. Gladstein.

Now I see that your friends are rising, so let us hear what Mr. Isserman has to say.

Mr. Isserman: If the Court please, I would like to ask your Honor to reconsider your Honor's ruling—

—Tr. Tr. 2336—

The Court: No.

Mr. Isserman: On the ground that—

The Court: No, I am not going to reconsider it and I do not want to hear any argument on it.

Mr. Isserman: On the ground that I have had no opportunity to be heard. There are other and important reasons why these articles should be admitted, and I would like to argue that before your Honor. Your Honor might excuse the jury and we can argue the matter then.

The Court: No, I do not think I desire any more argument.

Budenz—Cross
Colloquy

You know, I had an exhibition from you the other day that will long rest in my memory. You insisted that you had to go on, something like an hour and a half on something that could have been done in five minutes, repeating and renewing the objections that had already been made, and I am just not going to sit here and have this go on month after month. I just won't do it.

Mr. Isserman: Well, I would respectfully like to object to your Honor's remarks and I would like to have some opportunity to state the grounds on which, on behalf of my clients, I believe this evidence should be admitted. If the Court does not prefer argument I will merely state the grounds but I would like to have that opportunity.

The Court: Well, I see your point, that you

—Tr. Tr. 2337—

think you can, by telling the grounds, get the argument in that way, is that it?

Mr. Isserman: No. I can get my points in but I would like to argue them with reference to the record on those points, but if the Court rules I may not, I will merely state my grounds.

The Court: I do not desire to hear anything on it now, Mr. Isserman.

Mr. Isserman: Well, may I state my grounds, if the Court please?

The Court: All right, the jury may be excluded. You may retire.

* * * * *

—Tr. Tr. 2340—

• • • • • •

The Court: Now I rule in view—

Mr. Gladstein: Your Honor, could I say something?

The Court: —in view of what has been going on here and the various objections raised, I now rule, and I feel that I am compelled to so rule if the trial is ever to end, that from now on, on matters of evi-

—Tr. Tr. 2341—

dence—and this applies to both sides, to the Government and to the defense counsel as well—that if an objection is raised to evidence they shall merely say they object period, and if the Court desires argument or statement of grounds, the argument or statement of grounds can be made, and not otherwise.

• • • • • •

—Tr. Tr. 2342—

• • • • • •

The Court: Well, this is the last argument that I am going to hear from either side without asking for it. We will never be through. The jury will be

—Tr. Tr. 2343—

excused and we go on and on by the hour. There is no way to stop you people, no way to stop you without using means I do not care to employ.

• • • • • •

—Tr. Tr. 2346—

• • • • • •

Mr. Isserman: Now if the Court please, I would like to object to your Honor's ruling that counsel

will not be allowed to state the grounds of objection for the balance of this trial.

The Court: Without the request of the Court.

Mr. Isserman: All the cases require that the grounds be stated.

The Court: But when counsel exceed the bounds of propriety and persist day in and day out and week in and week out, month in and month out, something has got to be done to put terminal facilities to the case and unless I do that, why, we would never be through. Every time you get up you say you are not going to make an argument; you are merely going to state the grounds. And then you go ahead and make an argument. I think the record will bear me out. And you are not the only one. It has been done by—I think Mr. McCabe and Mr. Crockett have been a little bit more sparing in their words, but the rest of you have held forth at great length and I

—Tr. Tr. 2347—

have no other alternative than to make the ruling I just made.

* * * * * *

—Tr. Tr. 2350—

* * * * * *

The Court: Let me tell you something, Mr. Sacher, in every stage of this case I have been forced with the utmost reluctance and regret to do something to stop the processes of delay and confusion. I have had to do it again and again. Now you ought to know by now that when I start doing that I do it, and I may have to use some other steps besides the

one that I have started to use. If you have any notion that this trial is going to go on for years and that we are going to hear all these books read and all these things besides the point, I might just as well let you know now, it is not going to happen.

Mr. Sacher: Your Honor, it does not serve the purpose of the defendants to obscure anything. On the contrary—

The Court: I can't forget what happened on this challenge to the jury, how you people had me fooled on that. I thought you were going to bring something out any day and I found after three or four weeks passed that it was one big colossal bluff.

Mr. Sacher: Why don't we just let the dead bury

—Tr. Tr. 2351—

the dead?

. . . . . .

—Tr. Tr. 2364—

. . . . . .

The Court: Objection sustained. I find nothing there inconsistent with what the witness has testified.

Mr. Gladstein: In view of your Honor's statement that you find nothing inconsistent, the purpose of this is to show that everything that appeared did not advocate force and violence. If your Honor—

The Court: Mr. Gladstein—

Mr. Gladstein: Yes, but too many things—

The Court: —I don't desire argument.

Mr. Gladstein: No, I didn't want to argue.

The Court: What is it you are doing?

Mr. Gladstein: I am going to ask you a question, if I may.

The Court: Well, I don't think you may this time. Just go ahead.

Mr. Gladstein: There is no point in my offering other papers if your Honor's ruling is that the only thing you will receive is something—

The Court: It must take you a very long time to have a thought penetrate. I have interrogated you at such length this morning to see if there was something in these papers that you claimed to be incon-

—Tr. Tr. 2365—

sistent with the testimony given by the witness, and we seem to get nowhere, and paper after paper was used, and now, when I say again that I see nothing inconsistent with the testimony of the witness, you affect surprise and seem disposed to catechize me on the subject. I think my ruling is clear.

Mr. Gladstein: Well, I wish to renounce any intention to catechize. I submit—

The Court: You said you wanted to ask me a question, and I thought that was a form of catechizing.

Mr. Gladstein: No, I simply wanted—

The Court: Well, please go on with your next question. Let's stop fooling around.

Mr. Crockett: If the Court please, I move to strike from the Court's rulings those words "I find nothing inconsistent in this statement," as tending

undoubtedly to prejudice the jury against the case of the defendants and thus to that extent constituting a denial of due process to my client.

The Court: Motion denied.

Mr. Gladstein: May I say for the record that, in view of your Honor's ruling concerning the articles that I have shown to this witness, I will cease identifying and offering in evidence articles written by this witness dealing with various portions of Marxist-Leninist literature, upon the grounds that your Honor will not receive any of these in evidence.

—Tr. Tr. 2366—

The Court: Well, when you have articles such as those that you have just offered, it is highly probable that my rulings will be the same.

Mr. Gladstein: May I—

The Court: If you have others that are relevant and competent, you had better offer them and take my ruling.

Mr. Gladstein: Of course, if the only article I can show you is one which shows force and violence, I will never produce such an article because none was written.

Mr. McGohey: I move to strike that, if your Honor please.

The Court: Well, it is relatively innocuous. I don't like this business of striking things out, but I tell you now, Mr. Gladstein, that what I say is provoked by your comment: when you have literature by this witness which covers everything under the sun that may be deemed a grievance by anybody, of young people because they are not given positions of

responsibility, women because they are not given positions of men, colored people because they are excluded from this and that in certain parts of the country, the Jews because they are not treated, in their opinion, the same as other people, and so on down the line, I am going to make the same ruling that I have made here, you see, that that has no

—Tr. Tr. 2367—

bearing on what this witness has testified at all, and I am going to rule it out.

Mr. Gladstein: That is just the point your Honor exactly misses, that the whole body of Marxist Socialism is directed to and based upon the very things your Honor has listed.

The Court: Perhaps. It seems so. But this is a prosecution of these defendants, not of America as a whole or its various parts.

Mr. Gladstein: This is not a question of America. It is a question of—

The Court: We are going to litigate here whether these defendants are guilty of the crime charged. We are not going to litigate all various kinds of grievances that anybody of one kind or another may have throughout the country, and you may just as well eliminate those things as to the cross-examination of this witness because it seems to me they have no bearing upon his testimony.

Mr. Gladstein: But the defendants are charged with advocating the doctrines of Marxism.

The Court: You see, we never reach an end, Mr. Gladstein. You always will have the last word.

—Tr. Tr. 2368—

Mr. Crockett: If your Honor please, I wish to object to the Court's characterization of articles which have only been marked for identification and which the Court in its discretion has decided not to admit into evidence.

The Court: Well, I did leave out a few things in my reference to it. There are many other alleged grievances, such as the poor against the rich and so on and so forth. I didn't attempt to enumerate them all. However, your motion is denied.

Mr. Gladstein: I would like to state the grounds on which I offer all these exhibits.

The Court: I think it is a curious thing, a little while ago it was grounds for objection; now it gets to be grounds for an offer. If an offer doesn't speak for itself I don't see why not. Anyway I don't want to hear any more argument right now.

Mr. Gladstein: Am I to construe your Honor's statement as a ruling that I may not express the grounds on which I make the offer?

The Court: If you haven't already expressed the grounds on which the exhibits are offered—you see, we let the jury retire this morning and I heard sufficient argument to require me, as I felt, to make a ruling that in the future we are to have a new way of proceeding and I am going to follow that new

—Tr. Tr. 2369—

way of proceeding, and I am not going to hear any argument unless I ask for it and this is one time when I am not asking for it.

Mr. Gladstein: I simply ask your Honor if that is your ruling. May I have the record so show?

Budenz—Cross.
Colloquy

The Court: You have the last word.

Mr. Gladstein: I object to your Honor's failure to make a ruling.

The Court: The record does show. How many times has a man got to repeat something for it to appear on the record?

* * * * *

—Tr. Tr. 2431—

New York, April 5, 1949

Q. Did you receive any money for doing any work for Congressman J. Parnell Thomas along the same lines of your testimony here?

Mr. McGohey: Objection.

The Court: Sustained.

Q. During the years you were in the Communist Party—

The Court: How does it affect a man's credibility, that he gave the same testimony on a number of other occasions?

Mr. Gladstein: I object to any comment—

The Court: All right.

Mr. Gladstein: —by the Court.

The Court: I see. Then we won't enter into it.

Mr. Gladstein: I assign your Honor's remarks as misconduct.

The Court: If you think my ruling of yesterday prevents you answering a question from the Court, then I will simply let the matter drop there. My rul-

—Tr. Tr. 2432—

ing was that there was to be no argument unless I requested it. When I request it I expect to be answered and answered respectfully, but, however, we will let it drop.

Mr. Gladstein: Your Honor, I am allowed, am I not, to assign as misconduct remarks of the Court that, as a lawyer, I think constitute misconduct?

The Court: You may attack me all you want.

Mr. Gladstein: That is not what I said.

The Court: You may claim that I have been guilty of judicial misconduct of every name, nature and description, that is your right—and I shall take no offense at it.

Mr. Gladstein: I object to the Court's remarks and assign the Court's last remark as misconduct.

The Court: Very well.

Mr. Gladstein: And I ask that the jury—

The Court: Your objection is noted.

Mr. Gladstein: I ask that the jury be advised to disregard the Court's comments.

The Court: I shall make no such direction. Why should I tell them that? You objected to my judicial conduct, as you have done repeatedly before, and your objection is noted.

* * * * * *

—Tr. Tr. 2437—

Q. You said here, and let me show it to you, Mr. Budenz.

—Tr. Tr. 2438—

I show you page 2193 of the transcript and ask you, "Did

you testify as follows:" "Q. When did you decide, and here I am asking for a date, to leave the Communist Party?" Do you see that question there? A. Yes, sir.

Q. And did you answer, "Well, you cannot make it on a date"? Did you give that answer? A. That is correct.

Q. Then were you asked, "Q. When did you reach the decision in your own mind that you were going to leave? Can't you give us a date? A. I decided by degrees as everyone decides by degrees to do things"? Did you give that answer? A. That is correct.

Q. Then were you asked the following question, "Q. When did you reach the decision? A. I reached first the decision to return to the Catholic Church in January"? Did you give that answer? A. Yes.

Q. Did you, yes or no? A. But I was interrupted and, in addition, counselor, that was the decision to move—

Mr. Sacher: I object to this, your Honor.

The Court: Mr. Sacher, you can object your head off but what he says is absolutely right. It is an unfinished sentence. It is what I said before. The record shows it is an unfinished sentence, and that the witness was interrupted.

—Tr. Tr. 2439—

Mr. Sacher: But the word "first" appears long before he was interrupted.

The Court: Perhaps.

Mr. Sacher: He says, "I reached first the decision to return to the Catholic Church in January."

Philbrick—Direct
Colloquy

The Court: Mr. Sacher, if you are trying to indicate to the jurors you desire that they disregard my instructions and follow you, you are stepping on dangerous ground and you had better stop it.

* * * * * *

—Tr. Tr. 2657—

New York, April 6, 1949

Q. Was there any procedure adopted for those persons indicating that they wished to speak? A. Yes, before you could speak you had to write out your name on a card. The card was sent to the front of the room, to the chairman conducting the meeting, and in that way, you see, they could select the names of those who they wished to have speak.

Mr. Crockett: I move to strike out the last remark

—Tr. Tr. 2658—

of the witness.

Mr. McCabe: I object.

The Court: Did they do that?

The Witness: Yes, sir.

The Court: All right, allowed.

Mr. Isserman: I object to the question and answer, and ask that the answer be stricken.

The Court: Well, I will strike out the part that they could do it and leave in the part that they did it.

Mr. Sacher: That is a pyrrhic victory, your Honor.

The Court: It seemed to me not to be very much substance in the objection.

Q. Now, from what you have said—

Mr. Isserman: I would like to object to the Court's remark as to the character of the objection. The objection to your Honor's question was well taken because it called for—it suggested the answer, it was a leading question, if the Court please, and, beyond that, it called for a—the answer, which was given, as hearsay. The Court said, did they do it, without saying who and where and what was said. I object to the Court's characterization of the objection.

—Tr. Tr. 2659—

The Court: Very well. Overruled.

Mr. Gordon: I am having a hard time keeping my mind on the question.

What did I start to say, Mr. Reporter?

The Court: I think I remember what he has been talking about all right. We are up to the point where he has described sending these cards up, and then the man who was the chairman, he picked around and picked which ones he wanted to call on and he called on those.

Isn't that it, Mr. Witness?

The Witness: That is true, sir.

Mr. Sacher: I object to that and move to strike out your Honor's attempted summarization of the testimony as not being correct and as not being what this witness said.

The Court: This time I would like to hear you at length, Mr. Sacher. What is the difference be-

tween the way I summarized it and the way the witness testified?

Do you care to answer the Court's question?

Mr. Sacher: Yes, your Honor. I think your Honor clearly put the answer of the witness right in his mouth and put it there—

The Court: Your objection was that I had stated it differently from the way it was testified by the witness.

—Tr. Tr. 2660—

Mr. Sacher: Yes.

The Court: What is the difference?

Mr. Sacher: Well, I think if we just read it—I don't want to commence to quote your Honor and find I have muffed a word, but your Honor said the chairman picked whomever he wanted, et cetera, and then the witness said yes, and I say that that was not the testimony as previously given.

The Court: All right, we will have it read back.

(To reporter) Read back what the witness said about that.

Mr. Crockett: If the Court please, I object to this entire procedure and should like to state the reasons.

The Court: I will sustain the objection and we won't read it.

Mr. Crockett: My objection also—

The Court: I rather suspected you were going to do that, so it is all right.

Mr. Crockett: My objection also goes to the Court's persistence in summarizing the testimony of witnesses and thus giving the impression that more im-

portance should be attached to that testimony than ordinarily or otherwise might be attached to it.

—Tr. Tr. 2661—

The Court: All right. Go ahead. Now we won't have the question read, so you ask the next question.

* * * * *

—Tr. Tr. 2664—

Q. Now, Mr. Philbrick, on this literature table at the convention were there books by Marx and Engels? A. Yes, there were.

Mr. Crockett: I object.

Mr. Gordon: I think there was an objection.

The Court: Oh, I did not hear that. Nobody rose.

Mr. Crockett: Well, I object to the question being leading.

The Court: It is leading and if I had heard the objection I would have sustained it. I will strike out the answer.

—Tr. Tr. 2665—

He hasn't yet exhausted his recollection as to what was on the table. If he had done that I would permit some reference to some specific matters but I think his recollection should first be exhausted.

Mr. Crockett: I must object to that statement, your Honor, as suggesting to Mr. Gordon how he can get what he seems to be troubled about getting out of this witness.

The Court: Mr. Crockett, it is the function of the Court here to administer justice which I am trying to do to the best of my ability. Now you must know that such comment as you just made is not right.

Mr. Crockett: But I think the Court appreciates the fact—

The Court: Now I have been standing for all kinds of picking on me by the lawyers for the defense here and I am not going to raise any great issue about this one, but I really—I really think if it gets to a point where the Judge may not indicate what he thinks is the proper thing to do, it has reached a strange and pitiful state of affairs.

Mr. Crockett: I wish to disclaim any intent to pick on your Honor, but I think it was pretty obvious that Mr. Gordon was puzzled how to get from the witness what he wanted and the Court suggested that if the witness had established that he had ex-

—Tr. Tr. 2666—

hausted his recollection.

The Court: You see, the intimation in what you say is that I am sugesting it from some improper motive, not from the motive of doing justice but of taking sides in the controversy, which I do not do, and I really don't think there is any basis for your making such an insinuation, and that is why I comment on it.

Mr. Crocket: I had no intention of impugning your Honor's motives. I simply object to the Court making such a suggestion at that time.

The Court: All right. I made the suggestion, if you call it such—I didn't think of it in that light but however it may be, on numerous occasions here I have explained to counsel for the defendants when I thought it proper to do so, why I sustained certain objections and how the questions could be reframed.

I really do not see why I should not do that. I think it is proper to do it.

. . . . . .

—Tr. Tr. 2699—

New York, April 7, 1949

. . . . . .

The Court: I am inclined to think you raised the question, particularly yesterday, but you remember I have ruled that counsel is to merely say "I object", unless the Court requested a statement of the reasons. I don't want to keep saying that or to appear to be unpleasant about it. I felt that I had to make

—Tr. Tr. 2700—

such a ruling and I hope counsel will bear it in mind.

Mr. Isserman: If the Court please, I would like to object and request the Court to be allowed to state my reasons.

The Court: You see, Mr. Isserman, you have said that several times. I don't want to again reiterate the reasons why I felt impelled to make such a ruling. But I did feel that I had no alternative and it is my ruling. Your objection is noted.

. . . . . .

—Tr. Tr. 2813—

. . . . . .

Mr. Sacher: I object to this on the ground it is irrelevant, incompetent and immaterial, and I respectfuly submit that if this witness is going just to name people who were in his group then all he is doing is

now acting in fingering people, and since that has no relevancy of any kind to the case on trial, I think it ought to be excluded.

The Court: Now Mr. Sacher, do you remember a little direction that I have given, not once, not twice, but a number of times, that when a lawyer either for the prosecution or for the defense wants to object he

—Tr. Tr. 2814—

was to merely say "I object" and not argue unless I requested it?

* * * * *

—Tr. Tr. 2818—

New York, April 8, 1949

* * * * *

Mr. Sacher: I object.

Mr. Gladstein: An objection was made to this general question yesterday. I would like to call your Honor's attention to the fact that unless it is claimed that one or another of the defendants was present

—Tr. Tr. 2819—

speaking on this occasion, or unless there is established a good deal more than any pretense of foundation so far, this is prejudicial, immaterial, and simply means that some persons outside this court may suffer some economic or other reprisals. I suggest that your Honor reconsider this objection of mine because the value, if any—and I put the word "value" in quotes—of this testimony that is sought to be elicited, unless there is a claim that

one of the defendants was there speaking is highly prejudicial,

The Court: I see no necessity in the case of a conspiracy charge such as this of having the physical presence of each of the defendants on each occasion. It depends on the way in which the proof connects up. And I have already indicated that I shall charge the jury fully on that and I shall adhere to my ruling made yesterday. I overrule the objection.

Mr. Sacher: If the Court please, my recollection is that yesterday at the close of the session the witness testified that such discussion as took place in regard to Exhibit 46 for identification was led by so-called members of the group and that there were no teachers as such. I think that is the testimony, your Honor. And the question now is addressed to teachers.

The Court: Well, I think if there were individuals

—Tr. Tr. 2820—

who were teaching there it is admissible and I so allow him to proceed.

Mr. Sacher: May I call to your Honor's attention the testimony at page 2813.

The Court: I remember the portion you refer to. I remember that.

Mr. McCabe: Your Honor, I would like to make the further objection that the fall of 1947 is indefinite and permits testimony to come in without specifying the time in order to enable the defendants, if they care to, to meet that in a way provided by law.

The Court: Well, Mr. McCabe, I really am puzzled as to what I should do here. Now I have given repeated instructions that counsel should not argue objections to evidence, and yet no one pays the slightest attention to what I say. You go ahead arguing just the same, each of you, and I suppose the sensible thing for me to do is not to make a rumpus about it but to simply again tell you that it is my desire that there be no argument on objections to evidence unless I seek some enlightenment which I will do when I think it necessary.

. . . . . .

—Tr. Tr. 3030—

New York, April 11, 1949

Mr. Crockett: Again I offer Defendants' Exhibit GG, in evidence.

I believe you have a copy of this, have you not, Mr. Gordon?

Mr. Gordon: Yes, I have the copy that Mr. Philbrick turned in to the FBI.

Mr. Crockett: Does your Honor care to look at it again?

The Court: No. I have a very distinct recollection of it.

Do you object?

Mr. Gordon: I would like to change the ground of the objection.

The Court: Well, I don't remember your stating any ground before, Mr. Gordon; I hadn't asked for a statement of grounds, as I remember it, but perhaps

I did; but if you desire to say something now about it I will hear you.

Mr. Gordon: I thought I had objected on the ground that no foundation for it had been laid, and therefore to its competency, and I object to its relevancy at this time.

The Court: Well, I may say that the chief reason that I have been excluding it, and the reason I am going to exclude it again, is, it seems to me, one of those multitude of collateral issues which may have some place in the case but which I am going to try

—Tr. Tr. 3031—

my best not to have them exaggerated or blown up into undue importance. This seems to me to have only a remote bearing upon the testimony given by the witness. It is quite consistent with what he says that there might have been a number of things; there might have been a lot of talk about various policies of the Communist Party as to youth and women and anti-Semitism and working for the Negroes, working for the unions, and working for laboring people generally, and I feel that those issues should not be placed into a matter where they are given undue importance.

Mr. Crockett: May I be heard before your Honor makes his ruling?

The Court: Yes, I will hear you.

Mr. Crockett: The bulk of the testimony given by this witness has had to do with what was taught at these various membership meetings and training classes which he says were carried on by the Com-

munist Party of Massachusetts. Now he has also testified—I just brought it out from him—

The Court: Just a second.

(To Witness) Did any of those come in with these pro 4 meetings? This pamphlet, GG—

The Witness: No, sir. We have not used that in any of the pro meetings.

The Court: That is what I thought.

—Tr. Tr. 3032—

Mr. Crockett: But he did testify that they were used at meetings which he attended subsequent to the dates set forth in the indictment, and that they were part of the course of study that was offered during the educational portion of these meetings. Now if the witness has made a report, the substance of which he has testified here, and which deals exclusively with what was said at these meetings with reference to Marxist-Leninist literature, I submit that the jury is entitled to know the entire story of what was taught or what was discussed at these meetings, and in order to get that entire story we need this document in evidence to supplement the testimony of the witness. It is not contended primarily here that this document is offered to contradict his testimony; it is offered to supplement his testimony.

The Court: You see, it is always that way when a person is charged with a specific crime. It often comes up that they would like to go into other matters, to get the full picture, and the first thing you know there is so much to the picture that you get your mind off of what is the central feature of the

case. Now I don't think this case has to do with whether the Communist Party or these defendants, or any of these individuals, were in favor of these various things that they said they were in favor of. That comes into the picture to some extent, but I

—Tr. Tr. 3033—

felt that it was my duty here to see that it didn't suddenly expand the case to the point where we would never be through.

You see, if you get this pamphlet in, then there will be another one and another one and another one, and they will all get into these other matters which doubtless were part of the program, as the witness has testified.

Mr. Crockett: But the witness has testified, your Honor, that he was taught something about revolution—

The Court: Yes, he has.

Mr. Crockett: —and that there was supposed to be—the ideal time for revolution was if there was a depression. Now this pamphlet has to do with the position of the Massachusetts Communist Party on the question of depression, and I think that becomes very relevant as a supplement to the testimony which the witness has given.

The Court: Well, I am sorry that I can't agree with you.

Mr. Isserman: If the Court please, I would like to object to your Honor's characterization about "the bulk of the witness's testimony," and of the exhibit, and I would like to be heard—

The Court: Did I characterize the testimony?

—Tr. Tr. 3034—

Mr. Isserman: I believe your Honor did, and I would like to be heard on the question of relevancy of the document which—

The Court: No, I do not desire to hear you, Mr. Isserman.

Mr. Sacher: I should like an opportunity to call your Honor's attention to specific testimony and to a specific portion of this exhibit that I think will have a bearing on it. I would like to invite—

The Court: Would you like to have the jury excused so that we can take an hour or so with this?

Mr. Sacher: No, I think it will take a moment. I don't even have to mention it; I will hand the page—

The Court: If it will take a moment, you can go ahead.

Mr. Isserman: Before Mr. Sacher does I make objection to the character of your Honor's comment.

The Court: Then I will change my mind and I will not hear him. We will just get into another wrangle and I want to avoid it.

Mr. Gladstein: May I call your Honor's attention to the fact that because you just took umbrage at an objection which Mr. Isserman made as a lawyer—

The Court: I took no umbrage.

Mr. Gladstein: —you then reacted—

—Tr. Tr. 3035—

The Court: I suppose you begin—

Mr. Gladstein: May I finish, your Honor?

The Court: —to talk about my inflection of voice—

Mr. Gladstein: No, I am not talking about your inflection.

The Court: But I am not taking any umbrage at all.

Mr. Gladstein: But, your Honor—

The Court: But I am not going to have a long-drawn-out discussion of something that is perfectly clear to me.

Mr. Gladstein: No, but—

The Court: Now I don't desire to hear you on it, Mr. Gladstein.

Mr. Gladstein: I am not arguing the point because your Honor hasn't said you would hear me but I am pointing out that apparently your reaction to Mr. Isserman's objection was very manifest, was that you immediately reversed the ruling that you had previously announced concerning the right of Mr. Sacher to make an argument concerning a document.

The Court: I saw a very definite possibility of prolonged discussion which I desired to avoid.

—Tr. Tr. 3036—

Mr. Gladstein: Well, I submit that you were visiting a reprisal upon one lawyer and the men he represents because your Honor reacted unfavorably to the fact that another lawyer made a legal objection.

The Court: I suppose that I have been doing some very bad things and I am accustomed to your telling me so, and I take no umbrage at it at all but I must say that I can't agree with your characterizations.

Mr. Gladstein: Well, I hadn't attempted to make any characterization.

The Court: Well, you said two or three things about me that seemed as though you were characterizing what I did but I bear them patiently and I shall continue to do so.

Mr. Gladstein: May I say something in connection with the exhibit that has been offered?

The Court: No; I don't want to hear any argument about it.

Mr. Gladstein: Very well.

By Mr. Crockett:

Q. You were—

Mr. Isserman: Just a minute. I would like to make it clear, your Honor, that I did not intend to argue but I did want an opportunity to state grounds for sustaining the offer of this exhibit.

—Tr. Tr. 3037—

The Court: Very well, we will let the matter drop.

* * * * *

—Tr. Tr. 3129—

New York, April 12, 1949

Q. To your knowledge did any branch of the Communist Party in Massachusetts ever put out any literature referring specifically to your employer during the period of your employment?

Mr. Gordon: Objection.

The Court: Sustained.

Q. Were you working for Samuel Pinanski—

Mr. Crockett: Strike that.

Q. Samuel Pinanski was one of the partners in the M. & P. Theatre Chain where you were employed, is that right?
A. That is right, sir.
Q. That is located at 60 Scolley Square, Boston, Massachusetts?

Mr. Gordon: Your Honor, this is cross on cross. I object to it.

The Court: Yes.

Mr. Crockett: I am not cross-examining. I am just calling his attention to something that I am

—Tr. Tr. 3130—

leading up to, your Honor.

The Court: It seemed to me you have led up to that same thing four or five times, you and Mr. McCabe. If you intend to inquire into the private affairs of that corporation, I shall not allow it.

Mr. Crockett: I object to the Court anticipating my line of cross-examination.

The Court: Well—

Mr. Crockett: I would like to point out that this is not the first time that the Court has done that. I think I have a right to refresh the witness's memory by calling his attention to what he has been asked about before.

The Court: I was ruling and indicating to you what I had ruled before. Now, I wish you would try to avoid making comments that are not proper. When you speak of me as though I were some colleague, perhaps, or some member of the bar, I don't think it is quite the proper way to speak.

Philbrick—Cross
Colloquy

Mr. Crockett: I was stating an objection, your Honor, and I think I used proper language in doing so.

The Court: It may seem so, and I shan't be drawn into any personal controversy over it. So you may go ahead.

Q: During the period of your employment with M. & P.;
—Tr. Tr. 3131—
Theatres, Mr. Philbrick, did they circulate a film called "Song of the South"?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Was the Communist Party in Massachusetts opposed to the film "Song of the South"?

Mr. Gordon: Objection.
The Court: Sustained.

Q. Do you recall the period of time when the film "Song of the South" was being shown in theatres in Boston?

Mr. Gordon: Perhaps I should not object, your Honor.

The Court: No. I think, Mr. Crockett, if you continue to repeat the thing in these questions you will have perhaps circumvented my ruling, and I hope you won't do that. I cannot see that this has any bearing on the case at all. What that concern did, what pictures it published, what opposition there might have been one way or another I consider not

relevant here and having no bearing upon the case or upon the testimony of this witness. I indicated a few moments ago, when you challenged me with anticipating, as though there was something wrong in my doing that, that you and your colleague Mr. McCabe have come up to the question of the private affairs of this corporation a number of times, and

—Tr. Tr. 3132—

each occasion I have sustained objections to it. A moment ago I told you that I did not desire you to pursue that subject, despite which you have asked a series of questions which carry certain implications. I wish you would not do that again.

Mr. Crockett: I wish to object to the Court's use of the term "challenge" in characterizing the objection previously made.

The Court: You said, "it is not the first time your Honor has done this or that." I think I understand the dignity of my office, and that sort of talk does not impress me favorably. Perhaps you think that you may provoke me into saying something that will, perhaps, have some effect on the case, but I can assure you that that will not take place.

Mr. Crockett: I should like to assure the Court that I have no desire to provoke the Court. I desire to do nothing other than to perform my duty, to represent the interests of my clients.

The Court: Yes.

Mr. Crockett: And if, in doing so, it meets with the Court's displeasure, I shall desist.

The Court: No, your duty to your client does not

meet with any displeasure on my part at all, but I

—Tr. Tr. 3133—

will ask counsel to be respectful.

Mr. Crockett: May I proceed?

The Court: Yes, you may, but not with the repetition of the questions that you just put.

* * * * * *

—Tr. Tr. 3158—

Q. Now in connection with the subject of mobilization and the mobilization which took place in July of 1948, did any member of the Communist Party tell you what the purpose of that mobilization was? A. Yes, sir.

Q. And who was it that told you? A. Martha who is—

Mr. McCabe: Objected to, your Honor.

The Court: Overruled.

Q. Martha? A. The comrade named Martha who was chairman of that particular group at that time.

Q. And what did she tell you the purpose of that July 1948 mobilization was?

* * * * *

Mr. Gladstein: I object to that as hearsay, not binding on the defendants. Moreover, in the absence of the fixing of time, July '48 may very well be a time after the return of the indictments in this case.

The Court: Do you recall, Mr. Gladstein, my direction as to the stating of objections and argument?

Mr. Gladstein: Well, your Honor, I thought I

—Tr. Tr. 3159—

would be helpful to the Court by pointing out that it had not—

The Court: I say, do you remember?

Mr. Gladstein: I do remember, yes.

The Court: Don't you think it would have been a little better if you had said that you desired to be heard?

Mr. Gladstein: I am sorry. I thought—

The Court: You thought if you made the argument and asked me afterwards that would be better.

Mr. Gladstein: No, your Honor; it is simply that after you have practiced in courts for many years and you find that Judges all over the country permit you to state the reasons for your objections it becomes difficult for a man to find that all he can say is "Objection." Period. The Court—

The Court: Then lawyers had better avoid doing the things that made it necessary for me so to rule. You will kindly desist from argument now.

Mr. Isserman: I would like to object to your Honor's last remark.

The Court: Very well, objection overruled.

* * * * *

—Tr. Tr. 3189—

Mr. Isserman: I move to strike out the testimony of the witness—

Mr. Gordon: Excuse me a moment. Perhaps the jury shouldn't be here.

The Court: Well—

Mr. Gordon: Even just as a matter of convenience

to them. The last time we took a long time.

The Court: Perhaps they may remain. Do you desire the jury to retire?

Mr. Isserman: No, your Honor.

The Court: You don't expect to take very long?

Mr. Isserman: No, I do not.

The Court: Very well.

Mr. Isserman: I move to strike out the testimony of the witness and all the exhibits introduced by the Government through the witness Herbert A. Phil-

—Tr. Tr. 3190—

brick, on the following grounds: That the information that forms the basis of the testimony and all the exhibits introduced by the Government were fraudulently obtained by the witness as a spy at the behest and in cooperation with the FBI, an agency of the United States Government, which agency financed his said activities. He obtained this information and the exhibits through attendance at meetings in the homes of members of the Communist Party and meetings elsewhere to which he obtained admission solely upon his fraudulent and false representation that he had become and remained at all times a bona fide member of the Communist Party and as such bound by the Constitution and by-laws to advance the objectives of that Party, and as such member at these meetings he participated and influenced decisions on various matters including matters of petition, assembly, matters of supporting or opposing legislative policies and candidates for municipal, state and federal offices. Such activity by this witness was unconstitutional, undemocratic, and inci-

dent to a police state which seeks to exercise control over ideas, thoughts and political activities. It curtailed and abridged as to the defendants and all those associated with them in the Communist Party in Massachusetts the rights of speech, press and peti-

—Tr. Tr. 3191—

tion, assembly and political activity, and also invaded the security of their homes, persons, papers, and effects, which security is guaranteed and which rights are guaranteed by the First and Fifth Amendments to the United States Constitution. Therefore, to allow this testimony into evidence and these exhibits introduced by the Government to remain in evidence, destroys the defendants' right to a fair trial and denies them due process of law under the Fifth and Sixth Amendments of the Constitution.

The Court: Motion denied.

Mr. Sacher: I have something that I would like to call your Honor's attention to in support of this motion if I may.

The Court: Very well. Is it of the same general tenor as Mr. Isserman's motion?

Mr. Sacher: Yes. I do not intend to repeat what he said but I should like to call your Honor's attention—

The Court: As I understand it, you and your colleagues take the view that if someone with knowledge of the FBI or the police is in places where they observe persons who are later charged with crime, that what they see and hear is protected by the Constitutional provisions and may not be proven?

Colloquy

—Tr. Tr. 3192—

Mr. Sacher: Your Honor, if I may say so, with all due respect, there is no resemblance between what your Honor says and the position of the defendants as expressed by Mr. Isserman.

Mr. Isserman: If the Court please, I merely stated my grounds. I didn't argue.

The Court: You see, when you state grounds you have a very curious way of making it sound like argument.

Mr. Isserman: Well, grounds are a part of argument. They indicate the argument but they are not the argument.

The Court: Well, you might put them in a different form than argument, but now let's hear the ground by Mr. Sacher.

Mr. Sacher: I just wanted to call your Honor' attention to the observations of Federal District Judge Anderson in the case of Collier vs. Skeffington.

The Court: I thought you wanted to state grounds?

Mr. Sacher: I said I wanted to read something in support of Mr. Isserman's motion. This appears in 265 Fed. 17.

The Court: Just a second.

Mr. Gordon: I was going to suggest that since it is a matter of law from a law book that counsel could

—Tr. Tr. 3193—

hand it to your Honor.

The Court: Well, I think I will listen to it, but I suppose, of course, if I say anything after you read it, some objection will be made.

Colloquy

Mr. Sacher: I don't think your Honor ought to be inhibited by anything but the proprieties.

The Court: Well, I try not to be.

Mr. Sacher: Shall I proceed?

The Court: Yes.

Mr. Sacher: Here is what Judge Anderson said in the case of Collier vs. Skeffington:

"I cannot adopt the contention that Government spies are any more trustworthy or less disposed to make trouble in order to profit thereby than are spies in private industry, except in time of war when a Nathan Hale may be a spy. Spies are almost necessarily drawn from the unwholesome and untrustworthy classes. A right-minded man refuses such a job. The evil wrought by the spy system in industry has for decades been incalculable. Until it is eliminated decent human relations cannot exist between employers and employees or even among employees. It destroys"—

The Court: I think the jury will have to pass on the question of Mr. Philbrick's credibility, and I can see no useful purpose in your reading something like

—Tr. Tr. 3194—

that unless it be to just argue the matter of spies. We have heard so much about it I suppose we might as well get used to it. I see nothing about calling a person like Mr. Philbrick as a witness which presents anything more than the usual question of credibility.

Mr. Sacher: I just read this because it was part of a determination by a Judge in which he said that he would not believe these spies under oath who had done precisely what Philbrick did—in other words,

under the guise of being members or adherents of a political party had wormed their way into the confidence of their colleagues under false pretenses and then proceeded to testify against them.

The Court: I was afraid that you would get into a summation which seemingly you have done. Now the question of Mr. Philbrick's credibility is one which doubtless will be handled by counsel in their summation to the jury at the conclusion of the case if I find that the case is one to be submitted to the jury. I don't think it is proper under the guise of objecting to his testimony to launch into an argument about spies and whether they are to be believed and so on. That is something for the jury to say.

Mr. Sacher: All I am suggesting is that Judge Anderson sitting as a Judge—

—Tr. Tr. 3195—

The Court: You see, you repeat, as you always do. If I intimate that it is better not to do it, you repeat it. If I tell you not to do it you still repeat it, and I am utterly at a loss what to do. You seem to pay no attention to my directions. Now please, just thoughtfully consider the matter for a moment and then, if you insist on proceeding I will do as I have before, merely remain here quietly and endure it.

Mr. Sacher: I shall not require that.

The Court: Very well.

• • • • •

—Tr. Tr. 3245—

New York, April 13, 1949

Q. I asked you, what was done in the school, Chicago Workers School, in connection with this book? A. It was, so far as the school was concerned, made the central textbook for, particularly, the courses that went at that time under the name of Marxism-Leninism 1, 2 and 3—later were changed; I believe, to the name of Scientific Socialism 1, 2, 3—and what was done was to take the central theoretical sections which existed in each of the chapters, or each of the more important chapters, and use them as the center around which the principles taken up there were discussed. For example, in the, I think it is, the second chapter, it is one of the earlier chapters, there is a discussion of the role of the Communist Party. When the problem of the role of the Party was to be discussed, that was used as the basic material, with side reading from the older classic. When the question of tactics of the Communist movement in situations previous to a proletarian revolution, that is to say, in a democratic transformation from an older and more feudal situation, was discussed, the

—Tr. Tr. 3246—

fourth—the third chapter, one of the earlier chapters, I am not sure of the exact number, was used. So that what was done was, we said, "This was the experience of a Communist Party in a given situation. In the course of meeting these problems, the Russian Communists, Lenin and so forth, solved them in this and this manner; what sort of general conclusions for the working class movement in general can be drawn from these conclusions."

And since these chapters themselves were based on decisive and important material, drawn out of other and earlier writings of Lenin, Stalin, and so forth, it became a kind of compendium in one volume of what otherwise existed only in a whole series of scattered books here and there. Hence, it was stated at that time, in general, in the Communist Movement, in articles of all kinds and in conferences, in all the educational work, that this book—

Mr. Crockett: I object to this.

The Court: Yes, I will sustain the objection. Strike out the last part.

Mr. Isserman: I move that the entire answer be stricken on the ground that the witness is allowed to testify to the contents of a book, chapter by chapter, on what was done with specific chapters, and the book itself is not in evidence.

—Tr. Tr. 3247—

The Court: Well, he says what his recollection is of what he observed there. What I struck out was the part about all the books everywhere said this and that. I struck that out, but I will leave in what he said about the teaching in the school.

Mr. Isserman: But he is referring to the various chapters of the book and describing their contents and the book is not in evidence, and that is the best evidence of the contents.

Mr. McGohey: If the Court please, this book was marked Government's Exhibit 30 for identification and offered as a book. Thereafter certain passages of it, which were read, were offered.

Meyer—Direct
Colloquy

Mr. Isserman: It was not, if the Court please; my recollection is it was offered as a book. It was allowed. At the Court's suggestion the offer was withdrawn. And at this point the book is merely marked for identification and certain pages were marked in evidence.

The Court: That is just what Mr. McGohey said.

Mr. Isserman: He said it was offered as a book. It was not offered as a book.

The Court: It was offered—

Mr. McGohey: It was offered as a book and the Court declined to allow it.

—Tr. Tr. 3248—

The Court: —as an object. We mustn't use the word "book,"—as an object, and I was the one who suggested that if the whole book was put in evidence we might be trying all kinds of things until kingdom come.

Mr. Isserman: That is precisely—

The Court: And I didn't want to have that done, and the result was, just as Mr. McGohey has said, that certain pages were received in evidence. I am going to permit to stand what this witness has testified about what he observed in that school, and the objection is overruled.

Mr. Sacher: May I respectfully call your Honor's attention to the fact that the only pages in this volume in evidence are pages 130 to 172? And the witness has described the contents of Chapter 2 of Exhibit 30 for identification, which consists of, I think, about a hundred pages.

The Court: Mr. Sacher, I don't know how I am to stop you from arguing.

Mr. Sacher: I am not arguing. I thought I was of help to the Court.

The Court: I try every way I can to be pleasant about it, but firm, but you get up and you say over again the very same thing Mr. Isserman has just said, and you go right on about it. Now, I understand the situation here, and I will allow the answer to stand.

* * * * *

—Tr. Tr. 3255—

Mr. McGohey: If the Court please, I wonder if it might conserve some time if, while counsel are looking at Exhibit 48-A, that I have offered, I might read from 47-A?

The Court: It is an excellent idea unless objection is raised.

Mr. McCabe: I don't think it is an excellent idea to have evidence going into this jury while we are examining other evidence which is about to be—

Mr. McGohey: The point is—

The Court: I notice—

Mr. McGohey: —this is in evidence. The whole thing is in evidence.

The Court: And I have noticed that the examination of these last two exhibits has been very deliberate, and I think, perhaps, it might not be a bad idea, as I have observed that six of you have already read it through and it remains only for the

seventh to do so, that, perhaps, while Mr. McGohey reads from Exhibit 47, the other counsel could be alert to see if he read correctly—while you read Exhibit 48 for identification, Mr. McCabe. Don't you think that is sensible?

Mr. McCabe: Is your Honor speaking advisedly when your Honor says that six of the counsel have read the article through?

—Tr. Tr. 3256—

The Court: I should have said five.

Mr. McCabe: That anyone has read it through, your Honor?

Mr. Isserman: I wish to state that I did not have—

The Court: I cannot seem to make even the simplest comment without arousing a storm of objections. I see Mr. Isserman again on his feet.

Mr. Isserman: Yes, but there is no storm. I am merely rising to state that I haven't read the article through and could not have done so in the short time in which I had to look at it.

The Court: Perhaps you were just fingering it.

Mr. Isserman: I was looking at it and skimming over it but I did not read it, and I object to your Honor's remark.

The Court: I cannot say you read it through—one never knows—but I can testify to the length of time it took.

Don't you think it is a good idea to let Mr. McGohey go ahead and read from Exhibit 47 while Mr. McCabe examines, to the extent that he finds it necessary to examine Exhibit 48 for identification?

What do you think about that, Mr. McCabe?

—Tr. Tr. 3257—

Mr. McCabe: Well, if your Honor is—you are restricting my opinion on the conduct of the case to this one element, I take it?

The Court: It doesn't seem to be a vital point but perhaps we have used as much time talking about it as we would have used if you had gone ahead.

So, Mr. McGohey, you will please refrain from reading that exhibit until all of counsel for the defense have concluded their examination of the one now under consideration.

Mr. McGohey: Of course, I think the record—pardon me, Mr. Crockett—I think the record should show that what I have asked the Court to read from is a document which, at the time it was offered, was passed to counsel for the defendants, that they had read it and that it is admitted in evidence.

The Court: I understand their point, it is that they cannot tell whether you are reading it accurately while their mind is on another exhibit. So, for the time being, and without intending to make it a ruling for the balance of the trial, I shall sustain their objection.

Mr. McCabe: Of course, your Honor—

The Court: And I ask you not to read until they have finished glancing at what they are looking at.

Mr. McCabe: I object to your Honor's character-

—Tr. Tr. 3258—

ization of the reasons for my objection. It had nothing to do with accuracy—

The Court: What were your reasons?

Mr. McCabe: —with the accuracy of any reading. When evidence is being presented to a jury, your Honor, material is being read to a jury, counsel representing a defendant has not only the right but the duty to pay strict attention to the reading of it for the purpose, among other things, of determining whether other portions of the evidence should be read for the purpose of trying to determine whether the material read, excerpts from the article, properly represents the contents of the article, or whether it is torn from context. Sometimes an expression from the jury, an expression of particular interest from the jury, may indicate that they are getting a wrong impression of the article. So that I think—

The Court: Maybe scratching their heads or something like that?

Mr. McCabe: Well, I haven't noticed any of the jury doing that, your Honor, not that there is any harm in that.

The Court: You have commented on all sorts of trivial things. I don't think you are apt to find, by looking at the jury, as Mr. McGohey reads to them, anything which would indicate to you whether you

—Tr. Tr. 3259—

ought to do something or another, but I have sustained your objection. Mr. McGohey will not read until you and your colleagues have entirely concluded your perusal of Exhibit 48 for identification.

Mr. Crockett: Now, if the Court please, I wish at this time to interpose an objection to the Court's initial comment concerning the amount of time used

in examining Government's Exhibit No. 48 for identification, and I should like to state that, on behalf of myself, there has been no undue delay in examining that exhibit, and neither have I noticed any undue delay on behalf of any of the other attorneys who represent the defendants here.

—Tr. Tr. 3260—

The Court: Well, you see, Mr. Crockett, you and your colleagues have a way of thinking that when you say something that makes it so, and I think we will have to leave it perhaps to someone else to draw conclusions. Now what you have been doing you have been doing in the full and open view of every one here, and I think perhaps we can let it go until Mr. Gladstein, who is now taking another look at that 48 for identification, can consider it together with Mr. McCabe sufficiently to conclude the perusal.

Mr. Gladstein: Let the record show that I had not a chance to really look at it, and I tried to listen to what your Honor was saying as a matter of fact, which gave me no opportunity to study the document.

The Court: Well, you didn't miss much, as a matter of fact.

Mr. Isserman: I would like to object to your Honor's remark as the document had nine pages in it, I believe, and it took time to study, and whether Mr. Gladstein missed much by reading it or not, is certainly not a comment for the Court to make.

The Court: These objections are reaching a new low.

Mr. McGohey: If the Court please, this has been offered in evidence.

—Tr. Tr. 3261—

Mr. Crockett: And I wish to object to the receipt in evidence of Government's Exhibit No. 48, and to interpose a special objection in so far as the defendants whom I represent are concerned.

The Court: Let me look at it, Mr. Borman, please.

(Clerk hands to Court.)

The Court: Is it this article by Williamson, is it, that is offered, Mr. McGohey?

Mr. McGohey: Yes, your Honor.

The Court: (After examining) I will allow it.

* * * * * *

—Tr. Tr. 3304—

Q. Will you give us your best recollection of the substance of what Mr. Winter said at that Lenin Memorial meeting? A. Well, the opening remarks were in the nature of a tribute to Lenin and I specifically Mr. Winter stating that the time was soon to come when Lenin's teachings would be put into action.

Q. Do you remember what else he said? A. Yes. He continued during the course of the talk which lasted about 30 to 40 minutes dealing with a strike situation which was then in progress in Detroit. The General Motors Corporation was out on strike and Mr. Winter was very critical of the strategy that was employed by the union and he specifically mentioned Walter Reuther in that connection and—

Mr. Sacher: I object to this and ask that the witness be required to state what was said.

The Court: That is what he is doing.

Mr. Sacher: No; he said Mr. Winter was critical and that is stating his conclusion I submit.

The Court: Well, if you can be more specific, do so, as far as you can recall.

—Tr. Tr. 3305—

Mr. Gladstein: I have another objection. I move to strike the answer—

The Court: Try to keep your mind on what you were about to say.

(To Mr. Gladstein) Yes?

Mr. Gladstein: —strike out the answer so far as it has gone dealing with the strike of General Motors and remind your Honor of the fact that I was not permitted in cross-examination to go into any of the facts concerning the Allis Chalmers strike some years before although the Government went into it on direct examination, and I wish to point out to your Honor that the reason your Honor wouldn't permit me to examine on that subject was, as I recall it, that you felt it was remote from the issues in this case; and I therefore suggest that such portion of what is claimed to have been said there concerning such strike or any such matter concerning issues not in the indictment has no place in the case.

The Court: You see, Mr. Gladstein, you illustrate so well the wisdom of my ruling that there should be no argument on objections. I don't know how I

am going to enforce these rulings without being disagreeable. I will just let it go and at the present time I will just overrule the objection.

* * * * * *

—Tr. Tr. 3308—

Q. Now I think you said that the defendant Winter was there while Buck addressed the audience? A. He was. was.

Q. Did the defendant Winter interrupt Mr. Buck? A. No, he did not.

Q. Did he at the conclusion of Mr. Buck's speech get up and criticize it or say that it was wrong? A. He did

—Tr. Tr. 3308a—

not.

Q. Now will you give us your best recollection of—well, perhaps before we get what Mr. Buck said—how did Mr. Buck address the group who were assembled there? A. Well, during the course of his speech he addressed the gathering by using the term "We Communists."

Q. "We Communists"? A. (Nodding.)

Q. Is your answer yes? A. That is right.

—Tr. Tr. 3309—

Q. Will you give us your best recollection of the substance of what Mr. Buck said to the meeting?

Mr. Gladstein: I object to giving what Mr. Buck said to a meeting. I object that it is immaterial. I call your Honor's attention to the fact that the sole basis on which this is now offered is that somebody sat there, present, and did not get up to criticize.

The Court: Are you making these arguments just to force me to use some measures to stop you?

Mr. Gladstein: No, but, your Honor, Mr. Gordon—

The Court: You see, so often I mention the circumstances to you that lawyers here, both for the Government and for the defense, on matters of evidence will merely say they object, and you always look at me pleasantly and then you proceed to disregard my instructions.

Mr. Gladstein: May I have permission to say something on this?

The Court: No, you may not.

Mr. Crockett: I object, your Honor. I should like to state the reasons for my objection.

The Court: I will hear you, Mr. Crockett. I hope they are good.

Mr. Crockett: I object to this testimony as being

—Tr. Tr. 3310—

irrelevant and incompetent. I think it has no more connection with this case than the assumption that President Truman, for example, was responsible for being present when Prime Minister Chamberlain spoke out in Fulton, Missouri.

Voices: Churchill.

Mr. Crockett: Churchill,—I beg your pardon.

The Court: Overruled.

* * * * *

—Tr. Tr. 3320—

* * * * *

Mr. Isserman: I object, your Honor, and move that the answer be stricken.

The Court: Motion granted, the answer is stricken, and I will sustain the objection to the question as leading.

Q. Did Mr. Winter at the conclusion of Mr. Buck's address make any remarks referring to Mr. Buck's address? A. No.

Q. Did anybody else? A. Not that I recall.

The Court: You better speak up so we can hear you.

The Witness: Not that I recall. I am sorry.

Q. Now will you give us your best recollection of the substance of what Mr. Buck said at the meeting?

Mr. Isserman: I object to it and plead surprise.

The Court: Overruled.

A. Mr. Buck likewise—

Mr. Gladstein: Your Honor, may I state the grounds of objection?

The Court: I rather suspect it is what I have already heard but you may do so.

Mr. Gladstein: Your Honor, I object because this calls for statements not made by any defendant but statements supposed to have been made by some other person, the theory of its being offered against the defendants being that the defendant happened

—Tr. Tr. 3321—

to be in the same room—same room in a public meeting.

Colloquy

The Court: At a Communist meeting.

Mr. Gladstein: Any meeting, and didn't get up afterwards—open public meeting, and because he didn't get up afterwards and say anything by way of disagreement or otherwise, the theory is it is admissible against the defendant.

The Court: That is what you say the theory is.

Mr. Gladstein: May I know then the theory upon which it is received?

The Court: You see, it is the same old story. You get up to state grounds of an objection and argue, argue, argue. You ask me questions and then you begin to ask Mr. Gordon, and then we forget all about what we are doing and we have to start all over again.

Mr. Gladstein: No, my point is it converts the charge from one of supposed advocacy by a defendant into something that somebody else said.

The Court: It is the old story. You want to get up and argue to the jury, and perhaps others, when all you do is object and you continually insist that you are stating grounds of an objection when all you are doing is just making a little speech which you should reserve for your summation. The witness may answer the question.

—Tr. Tr. 3322—

Mr. Crockett: I object to the tone of voice of your Honor and to the Court's statement—

The Court: You object to my tone of voice, Mr Crockett?

Mr. Crockett: I certainly do.

The Court: I am very sorry, there was nothing about my tone that should give rise to any criticism whatever.

Mr. Crockett: I further object to the Court's statement with reference to Mr. Gladstein's statement in which your Honor said it was a Communist meeting, as being contrary to the testimony that has been given in this case.

The Court: And what do you say it was?

Mr. Crockett: It was a public meeting.

The Court: But it was a Communist meeting, was it not?

Mr. Crockett: It was a public meeting, according to the record in this case.

The Court: I recall no statement by me that there was anything secret about it. It is bandying words over nothing. It seems to me the witness has said it was a Communist meeting.

(To Mr. Gordon) Let me see that leaflet.

Mr. Gordon: The leaflet says—

—Tr. Tr. 3322a—

The Court: Doesn't the leaflet say it was a Communist meeting?

Mr. Gordon: Yes, your Honor.

The Court: Show that to Mr. Crockett. I don't understand your point.

—Tr. Tr. 3323—

Mr. Gordon: This is offered not against the defendant Winter but against all the defendants as being in 1946.

The Court: I know, but there is some criticism by Mr. Crockett of my using the words that it was "a Communist meeting."

Colloquy

Mr. Crockett: I submit—

The Court: What do you say it was?

Mr. Crockett: I submit, your Honor, that the testimony in this case has been to the effect that this was a public meeting, open to the public.

The Court: Who said it was not?

Mr. Crockett: Your Honor said "a Communist meeting," with special emphasis on the word "Communist."

The Court: Well, that is the most ridiculous thing I ever heard, Mr. Crockett. I wish you wouldn't do that. There is just no sense in that at all.

Mr. Crockett: There has been some testimony in this case, your Honor, about meetings held by Communist clubs—

The Court: There sure has.

Mr. Crockett: —and persons who were not members were not supposed to be present—

The Court: That is right.

Mr. Crockett: —similar in all respects to Young

—Tr. Tr. 3324—

Democratic Club meetings which I attended.

The Court: Did not sound similar to any meetings I have had anything to do with, as long as we are talking personalities.

Mr. Gordon: I must take exception to Mr. Crockett's statement that Young Democratic Clubs are attended by Communists and only Communists.

The Court: It is the old story—

Mr. Crockett: I don't recall making any such statement, your Honor,

Colloquy

The Court: —you were telling us about the meetings you have attended—.

Mr. Crockett: Yes.

The Court: —and you said these meetings which are described here were similar to the ones you attended. I say I never went to any meetings, like that, as long as we are talking personalities about it. What difference does it make what meetings you went to or what meetings I went to?

Mr. Crockett: I am concerned with Mr. Gordon's last remark in the record, and I submit that he misquoted me, and that is what I got up to object to.

The Court: Then, let us have it all out. Let us have the quotation from Mr. Gordon and we will see whether he misquoted you. We may find a comma

—Tr. Tr. 3325—

missing or something.

It is a further demonstration that cutting off these arguments has been, at least, effective.

Mr. Crockett: I object to that observation on the part of the Court.

Mr. Gordon: Your Honor, maybe we had better get on with the questioning of the witness.

The Court: No, we will see, now that Mr. Crockett has raised the question, whether you misquoted him or not. Let's not leave everything up in the air so we jump from perch to perch and never alight anywhere. This time we will stop and see what it is. Find the place where Mr. Crockett made a statement and where Mr. Gordon made a statement.

(Mr. Gordon's statement read by the reporter.)

Colloquy

Mr. Crockett: I submit that I made no such statement.

Mr. Gordon: Now let's see what Mr. Crockett said, Mr. Reporter.

(Mr. Crockett's statement read by the reporter.)

Mr. Gordon: Let's get that straight.

(Mr. Crockett's statement re-read by the reporter.)

Mr. Gordon: I must interrupt. That is not what Mr. Crockett said.

The Court: Well, I guess we will—

—Tr. Tr. 3326—

Mr. Gordon: As long as it is the subject of laughter let me finish it, please, your Honor.

The Court: It gets so after a little while I won't remember what this is about. But go ahead and tell me.

Mr. Gordon: As I understand it he said there was some testimony about Communist Club meetings. He didn't say persons were present who were not Communists. He said no one was present who wasn't a Communist.

The Court: Maybe you misunderstood him. That is something we all may do. It looks like this time Mr. Crockett may have been right.

Mr. Gordon: Mr. Sacher says it is possible that is what he said.

Mr. Sacher: Oh no, no.

The Court: It just shows how you can get to waste a lot of time. But everybody is in a good humor now and I have an idea this is a good time to adjourn. We are going to have the Passover holi-

day and Good Friday. I think it is an excellent time for us all to break up with a very pleasant feeling of good will. And so with that we will adjourn until next Monday morning, but before we adjourn let me give you my little admonition.

Ladies and gentlemen of the jury, remember the admonition I have heretofore given you:

* * * * *

—Tr. Tr. 3366—

New York, April 18, 1949

* * * * *

The Court: You have asked a long series of questions to which I have sustained objections having to do with this General Motors strike which is not in issue in this case, and you go on asking questions as though you were telling us the facts as if they were so and when I sustain all these objections I would think it would be well to pass on to something else. But in any event when you state something as positive fact there is a question after that and you are merely asking the witness whether these things are so. That is all right.

Mr. Crockett: Well, they happen to be facts but I am merely saying—

The Court: You shouldn't state that, Mr. Crockett. You know you have no right to do that. Now please do not do that again.

* * * * *

Nowell—Direct
Colloquy

—Tr. Tr. 3387—

* * * * *

Mr. Gladstein: If your Honor please, I submit that there has been already more than enough of this so-called background and I ask your Honor in the discretion that you possess to require the prosecution to elicit testimony if it has any testimony to elicit from this witness dealing with the period involved

—Tr. Tr. 3388—

in the indictment, April 1945 and thereafter, and not to permit—

The Court: I shall give no such instructions, Mr. Gladstein.

Mr. Gladstein: But, if your Honor please, you have already said you will see if there is any connection.

The Court: He has already made the connection.

Mr. Gladstein: If your Honor please, he has already said the last time he had any connection with the Communist Party was in the year 1936, and I submit that that not only being several years before the Smith Act, under which this indictment is brought, but ten years prior to the period when the conspiracy was supposed to be formed,—

The Court: Mr. Gladstein, do you remember my saying I did not desire to hear argument?

Mr. Gladstein: But, your Honor, this is highly prejudicial.

The Court: If you insist on going ahead you may do so, but if you do so realize it is against my expressed command.

Mr. Gladstein: I assign your Honor's handling of my objection as misconduct.

Nowell—Direct
Colloquy

The Court: I am getting used to these charges of misconduct. I don't think there has ever been a case where so many charges of misconduct have been made with so little foundation.

—Tr. Tr. 3388a—

Mr. Gladstein: I assign the present ruling as misconduct.

The Court: All right.

* * * * *

—Tr. Tr. 3398—

Mr. Gladstein: No, your Honor; I submit that if the charge here is something that these men are supposed to have conspired to advocate beginning April 1945, that this is most highly prejudicial and has no probative value whatever.

The Court: Mr. Gladstein, I have suspected for some time, and now I am thoroughly convinced, that your insistence upon arguing matters is done to provoke me.

Mr. Gladstein: No, your Honor, that is not true.

The Court: You are just wasting time—

Mr. Gladstein: It is done in an effort to try to persuade you—

The Court: You are simply wasting your time if that is the purpose, and I can conceive of no other because you get up and say substantially the same thing again and again and again, and it has been said before by others. The questions, so far as the record is concerned, are plainly stated there. If it is your point to assign error, the error has been assigned not once, not twice, but many times, and you are just wasting your time if you think you are going to provoke me—

Mr. Gladstein: No.

The Court: Because you won't.

Mr. Gladstein: May I state the purpose of my objection?

—Tr. Tr. 3399—

The Court: No—

Mr. Gladstein: I haven't given up hope and I won't give up hope—

The Court: Well,—

Mr. Gladstein: —either this court or some court will appreciate the validity of my point—

The Court: You see, Mr. Gladstein—

Mr. Gladstein: May I finish, your Honor?

The Court: —Mr. Gladstein, when the Court, who is in charge, tells a lawyer a certain thing, the lawyer ordinarily will respect the Court's direction and follow it, but you seem to have a notion that it is better for you and your clients to do otherwise. Now I am not going to resort to any unseemly means of stopping you but from now on I think it must be very evident if you desire to argue without my leave that you are disobeying my commands.

Mr. Gladstein: Well, may I make a suggestion?

The Court: Well, I think you would do better if you sat down; but if you prefer not to you may go on.

(Mr. Gladstein sits down.)

* * * * * *

—Tr. Tr. 3433—

* * * * * *

Mr. Sacher: Your Honor, Mr. Winter is being tried for something alleged to have happened between 1945 and 1948.

Nowell—Direct
Colloquy

The Court: Didn't the witness testify that Mr. Stachel told him to go over there and see if he couldn't learn something to overcome his error?

Mr. Gladstein: But that isn't what the defendants are being charged with. The defendants are being charged with one thing in the indictment and you are permitting evidence on something else. I submit it is not due process of law to be told in a grand jury indictment that you are charged with teaching and advocating something from and after 1945 and then having evidence given that deals with the year 1931.

The Court: Do you realize, Mr. Gladstein, that the intent of these individual defendants is involved?

Mr. Gladstein: I submit it is not legally involved because there was no statute in 1940.

The Court: Do you remember that that point had been argued a dozen times, and I have decided adversely to your contentions?

Mr. Gladstein: But, your Honor, I still had hoped we may be able to persuade you of the error of your ruling.

The Court: I think you have persuaded me con-

—Tr. Tr: 3434—

tinually that you disobey my instructions.

Mr. Gladstein: Well, I submit it is not a fair trial to be presented with this sort of inquiry in the face of the character of the indictment. I object to this line of examination.

* * * * *

—Tr. Tr. 3437—

* * * * *

Colloquy

Mr. Isserman: If the Court please, I would like to adopt the argument of Mr. McCabe as to my defendants, whether they were named by this witness or not, and add to it the fact that the matter is a matter of unfair surprise in that there was no reference to the time or the place—the time covered by this testimony or place at which the events were supposed to have happened—in the indictment, no indication in the indictment as to the time.

The Court: I would suggest, Mr. Isserman, if it is possible to do it, when you desire to argue some matter of evidence you receive my permission to do so.

* * * * *

—Tr. Tr. 3508—

New York, April 19, 1949

* * * * *

The Court: Let me ask you this. The witness was asked whether he worked for the service department and he said he didn't. Do you take the position that Mr. Isserman takes that when you get a negative answer on a collateral matter, that you may continue cross-examining? Didn't you ever hear of that rule?

Mr. Gladstein: I don't want to plead ignorance of any of the rules, even though I have not had occasion to think much about those rules in the last couple of weeks.

The Court: If that is one of those mild darts, it failed to meet its mark.

Mr. Gladstein: It is in fond memory and reverence of rules that used to be applicable.

* * * * *

Colloquy

—Tr. Tr. 3510—

• • • •

Mr. Sacher: But I wish to submit that I think there is a misconception on your Honor's part of the significance of the rule in regard to collateral matters. That rule is simply this, as I understand it, that when you interrogate on cross-examination in regard to collateral matters you may not, on the defendants' case or the plaintiff's case, whichever the one may be, introduce evidence to contradict the testimony of the witness in regard to collateral matter.

The Court: No; it further holds that you may not pursue the inquiry. The reason is obvious—.

Mr. Sacher: No, no.

The Court: —because you go on and on and there is never any end. Those are collateral matters we are talking about.

Mr. Sacher: I am talking about precisely collateral matters and I think Mr. Gladstein has stated the

—Tr. Tr. 3511—

rule correctly when he says that the cross-examiner is not bound in the first instance to accept no for an answer. As a matter of fact, in many instances the ultimate question is put to the witness on cross-examination with a view to getting a false answer from him and then, under questioning, that answer, by the details which are then called to his attention—

The Court: If that is what you are up to there is very good reason for me to put a stop to it.

Mr. Sacher: No, your Honor, you are—you are

just stopping—if that be the assignment of the reason on your Honor's part, then I can simply say that the design of the ruling is to simply prevent the eliciting of the facts from this witness, and I wish to submit that—

The Court: You may just as well throw that charge against me in with the others.

Mr. Sacher: But, your Honor—

The Court: I have no intention of excluding the truth here at all.

* * * * * *

—Tr. Tr. 3663—

New York, April 22, 1949

Q. Now give us your best recollection of the substance of what was said, A. Well, after the meeting had gone on for some time and we got into the political aspect of it—

Mr. Gladstein: Just a moment. I want to object to this, if your Honor please.

The Court: You mean you object to his saying that the meeting had gone on for some time?

Mr. Gladstein: No; he is about to give the conversation.

The Court: Oh, I will overrule the objection.

A. (Continuing) Well, after the meeting had gone on for some time we entered into a discussion of politics and the war and Al Lannon reported to the meeting that the war couldn't last much longer, it was about over, but he said that we must put on an extensive recruiting drive there in

Maryland, that they were putting on one all over the

—Tr. Tr. 3664—

country, that we must put one on in Maryland because he said that the American General Staff had already planned a war with Russia and that the only thing that they had to do now was to iron out the details of that war, and, of course, he said in the event of that war with Russia the Party would have to adopt a policy of sabotage. He said —he pointed out that not only this policy must be adopted for war industries but for every other industry, all industries. He said this is to demoralize the population to the extent that they couldn't adequately support a war.

Mr. Gladstein: Now I move that all of this be stricken as wholly outside the issues of the case, indeed falling within a section of the law which, if the grand jury or the United States Attorney had any idea that they could make that kind of a charge against these defendants, they would have charged it under that section of the law that applies.

The Court: Mr. Gladstein, how many times are you going to continue to make arguments without asking my leave to do so in reference to matters of evidence? You do it so persistently and so often—

* * * * * *

—Tr. Tr. 3676—

* * * * * *

Q. Do you remember anything else that was said by Lannon and Schusterman? A. Well, just what it was pointed out, as I said, that a revolution wouldn't be successful in the country without the help of the Red Army and until the Soviet Union had consolidated its position

in Europe that the hope of that couldn't be held very high.

Q. All right, did you say anything? A. Yes, I did. I had a question in my mind and I asked Lannon how the

—Tr. Tr. 3677—

Soviet Union could possibly ever invade the United States without a navy and Lannon pointed out to me as had been pointed out before that the Red Army in Siberia numbered some hundreds of thousands and was a strong force and that the Russians were constantly building it up and they had a good air force, they were building air strips, whenever the time come with air support the Russians could invade Alaska down through Canada and they could even destroy Detroit.

Mr. Gladstein: What was that?

The Court: They could even destroy Detroit, as I understood it. Did you say that?

The Witness: That is what I said.

The Court: Why all of the defendants are smiling broadly.

Defendant Gates: Why certainly we are.

Defendant Potash: Certainly we are.

The Court: We are getting back to that country club atmosphere again. Well, there isn't going to be any country club atmosphere in my court.

Mr. Gladstein: When a man hears something that is ludicrous and absurd to the extreme I suppose he is permitted the human reaction of a smile of contempt.

The Court: That to me is in the same line as some of the comments we have had in the past. It

Nicodemus—Cross
Colloquy

—Tr. Tr. 3678—

may seem very funny to the defendants. They seem to enjoy it, but I don't think it is, and their laughing is not going to have any effect.

Mr. Gladstein: This is the Federal court. I had expected a serious and sober effort on the part of the Government, if it could, to prove the charge that have been made that a political doctrine advocates the overthrow of the United States. But instead of that we are being treated to one after another of these witnesses, persons giving the same type of story we have heard from Congressmen Rankin and J. Parnell Thomas.

The Court: Another little speech.

Mr. Gladstein: That is what we get. Your Honor asked why people are smiling, but there is an irony to it.

The Court: I had occasion to put a stop to some of that before. I am familiar with the practice in criminal cases of trying to laugh something off, and I am not going to have anything but order in my court. When the defendants get hilarious and start laughing and smiling and that sort of thing it is going to be stopped. You can put that in your book.

Mr. Gladstein: I would like the record to show that there was no hilarity on the part of any defendant.

The Court: I saw it and it is noted, and your

—Tr. Tr. 3679—

denial doesn't change it.

Mr. Gordon: Why the defendant John Gates said certainly he was laughing.

Defendant Gates: Do I understand that you are now forbidding me to smile?

The Court: No, I don't think so.

Defendant Gates: It is bad enough we are not allowed to think. Now you want to forbid us to smile as well.

The Court: Well, you are evidently a very bold man and you get up and have your say. That is all right. I am not ordering you not to smile, but I am going to have order in my courtroom, and I am not going to have testimony laughed off by the sort of procedure that we have had in the past. We will just stop there.

Mr. Crockett: I wish to object to the remarks by the Court and assign those remarks as judicial misconduct by the Court in line with various other personal comments he has made concerning the defendants and their counsel.

* * * * *

—Tr. Tr. 3752—

* * * * * *

Q. Was it from January 8th to January 10th or 11th, 1948? A. I don't just recollect the date of that either.

Q. Did you see that the indictment says that you were there on January 8, 1948? Did you see that before?

Mr. Gordon: I object to any further questions along this line.

The Court: Sustained.

Q. How long after—

Mr. Sacher: I withdraw that.

Q. You were arrested on January 10th, were you, in connection with this offense?

Mr. Gordon: Objection.

The Court: Sustained. You will ask no further questions about that incident. The record shows the man was found not guilty. If you think you are going to retry that case, you are making a mistake.

Mr. Sacher: I am not going to retry it. The record also shows he was sentenced to pay costs after he had already interposed a plea of guilty.

The Court: I will sustain the objection.

Mr. Sacher: All right.

—Tr. Tr. 3753—

Mr. Gladstein: Excuse me. Your Honor, I move that you strike the remark you have just made for the third time about what the record shows.

The Court: I deny the motion.

Mr. Gladstein: And I ask your Honor to instruct the jury to disregard those remarks for this reason—

The Court: I don't want to hear any reason.

Mr. Gladstein: But I want—

The Court: Mr. Gladstein—

Mr. Gladstein: I am trying to assign some remarks—

The Court: —this is one time when you will not give any reasons. So you will—

Mr. Gladstein: May I not assign—

The Court: You will please desist.

Mr. Gladstein: May I not assign remarks as misconduct?

The Court: You may not—you may assign misconduct, you may do that to your heart's content, but you are not going to give any further reasons.

Herron—Cross
Colloquy

Mr. Gladstein: May I assign that which I consider your Honor has done, which I am assigning as misconduct, or am I simply confined to saying misconduct?

The Court: I think that is enough this time.

* * * * *

—Tr. Tr. 3888—

New York, April 25, 1949

* * * * *

Mr. Crockett: May I ask the basis for the Court's ruling?

—Tr. Tr. 3889—

The Court: No—you may ask.

Mr. Crockett: But I seem to recall on my cross-examination that a witness was permitted to state the names of the agents.

The Court: This seems a little different to me. You know, I have a certain discretion in these matters.

Mr. Crockett: I just wanted to know if the rules change as we go along.

The Court: I consider that a rather impertinent remark, Mr. Crockett.

Mr. Crockett: I assumed the law of the case had been established in the prior examination.

The Court: Well, you may have your own opinion about my conduct, but I hope you will try to restrain yourself, if you can. I sustain the objection.

* * * * *

Herron—Cross
Colloquy

—Tr. Tr. 3918—

* * * * *

Q. Was the club named after a man named Haym Solomon?

Mr. Wallace: Objection.

The Court: Sustained.

Mr. Isserman: If the Court please, I would like to ask the Court to take judicial notice of the fact that the man Haym Solomon is dead some several years. He was a figure in the American Revolution.

The Court: This is the first time I ever have become acquainted with the gentlemen. I don't see what that has got to do with it. You Communists have a way of taking all kinds of names.

Mr. Sacher: I object to that remark and ask your Honor to strike that remark and to direct the jury to disregard it.

The Court: I will deny the motion.

Mr. Gladstein: I wish to say that the remark was

—Tr. Tr. 3919—

intended to be derogatory to the defendants and it couldn't have been intended any other way. I object to it.

The Court: You have done a lot of—

Mr. Gladstein: I would like an objection rather than an invitation to engage in repartee.

* * * * *

—Tr. Tr. 3935—

* * * * *

The Court: You have a pamphlet here of a large number of pages. I am trying to tell you that the